

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2003-158-C - ORDER NO. 2004-578
NOVEMBER 23, 2004

IN RE: Petition of FTC Communications, Inc. d/b/a) ORDER GRANTING
FTC Wireless for Designation as an Eligible) PETITION TO
Telecommunications Carrier in the State of) PARTIALLY RESCIND
South Carolina.)

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Petition of FTC Communications, Inc. d/b/a FTC Wireless (FTC or the Company) for designation as an eligible telecommunications carrier (ETC) in the State of South Carolina. FTC has filed a Petition to partially rescind and amend Order No. 2003-591, dated October 20, 2003. The South Carolina Telephone Coalition (SCTC) has filed a Return to the Petition to partially rescind.

FTC states that on October 20, 2003, the Commission issued its Order Continuing Hearing, Vacating Scheduling Order and Ordering Study, finding that “many of the issues raised in the FTC docket are the same or similar to those raised in the ALLTEL docket, which has already been heard. Judicial economy justifies the granting of SCTC’s motion. We also agree that unnecessary duplication may result if we proceed with the FTC hearing prior to rendering a decision on the ALLTEL matter” and ordering these proceedings be continued and a new hearing date established “after a decision is rendered on the ALLTEL ETC application which is presently before the Commission.” On December 8, 2003, this Commission issued its Order, Order No. 2003-702, in Docket No.

2003-0151-C on motion of ALLTEL granting ALLTEL's request to withdraw its pending application for designation as an ETC. Consequently, the Commission will not render a decision on the ALLTEL ETC application. FTC argues that a strict reading of the October 20, 2003 Order would leave the FTC ETC application pending in perpetuity to the extent that a new hearing date was not to be set until the Commission had rendered a decision on the ALLTEL ETC application. The withdrawal of the ALLTEL ETC application addresses the concerns expressed by the October 20, 2003 Order with respect to the unnecessary duplication that may have otherwise occurred, according to FTC.

FTC further states that in its October 20, 2003 Order, the Commission rationally determined that it would engage in a study to determine appropriate considerations and criteria to guide the designation of additional ETCs in areas served by rural telephone companies. (This study is now complete.) The Federal-State Joint Board also issued a recommended decision wherein it recommended the establishment of criteria similar to those set forth in the *Virginia Cellular* ETC Order. FTC states that its application for ETC status is consistent with all federal criteria and it stands ready to submit to a rigorous review of its application in this proceeding.

SCTC filed a Return to FTC's Petition. SCTC opposed the Petition on several grounds. One ground was that the Commission was conducting a study on public policy and other issues related to designating wireless carriers as ETCs. Again, this study is now complete. SCTC further alleges that although S.C. Code Ann. Section 58-9-1180 provides in part that the Commission may rescind or amend any order or decision made by it, that Code section specifically exempts those cases provided for in S.C. Code Ann.

Section 58-9-1200, which provides a procedure for parties to a proceeding in which an order is issued to petition for rehearing or reconsideration of the order. SCTC alleges that in this case, FTC is essentially seeking reconsideration of a Commission order, under the guise of asking the Commission to rescind or amend the order, outside the statutory frame for doing so. Finally, SCTC states that, even if the Petition is procedurally proper, FTC has demonstrated no reason why the Commission should partially rescind and amend its Order.

We disagree with SCTC. Again the public policy study is complete. Further, we disagree that FTC is attempting to file a Petition for Rehearing or Reconsideration out of time. We think that the provisions of S.C. Code Ann. Section 58-9-1180 apply in this matter and allow us to amend Order No. 2003-591, if we deem it appropriate.

Further, we believe that FTC has stated good grounds for amending the Order, since ALLTEL's request for ETC status has now been withdrawn, and the public policy study ordered by us is complete. There is no reason to hold up a hearing on FTC's request. Accordingly, we hold that the portions of Order No. 2003-591 which continued this matter and which directed that this matter be scheduled for hearing after a decision is rendered in the ALLTEL ETC application be vacated. This matter shall be scheduled for a hearing and appropriate prefiling dates shall be established for the hearing date.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/
Randy Mitchell, Chairman

ATTEST:

/s/
G. O'Neal Hamilton, Vice Chairman

(SEAL)